



*Ignorance is Bliss (Part II)*

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## **Forgot to follow Wisconsin pollution laws? No worries, DNR doesn't mind**

**Maria Powell, PhD**

In a [previous article](#), MEJO explored whether the Goodman Community Center, built on a contaminated former industrial site, followed DNR statutory requirements they agreed to follow when excavating on the site after remediation. The DNR confirmed in January 2013 that the Goodman Center did not follow relevant laws. Will the DNR cite them for ignoring these laws? No. Apparently, following DNR laws is optional.

To recap: According to an Oct. 24, 2008 letter from the DNR, when doing any excavation on contaminated areas that have been capped—which includes most of the site—Goodman Center owners are required by DNR statutes to:

- Sample and analyze excavated material to determine if residual contamination remains (or assume that it is contaminated and manage it accordingly)
- If sampling confirms that contamination is present the property owner, determine whether the material would be considered solid or hazardous waste
- Assure the all current and future owners and occupants of the property are aware that excavation of contaminated soil may pose an inhalation or other direct contact hazard and take special precautions during excavation activities to prevent health threats to humans
- Keep an up-to-date maintenance plan and inspection log on-site regarding the contamination cap and/or barrier and make it available to all interested parties

Under "Prohibited Activities," the 2008 DNR letter states that the following activities require prior written approval from the DNR:

- 1) Removal of the existing barrier;
- 2) Replacement with another barrier;
- 3) Excavating or grading of the land surface;
- 4) Filling on capped or paved areas;
- 5) Plowing for agricultural cultivation; or
- 6) Construction or placement of a building or other structure.



Worker (in hardhat, bending over) working below grade at Goodman Center (October 2012)

In 2008, when the Goodman Center property purchase was finalized, Goodman leaders signed documents agreeing to follow these laws, intended to protect people at and near the center from exposures to contaminants. MEJO's review of DNR files revealed no documentation that they have followed these requirements for any of the several projects done on the property since 2008, including some excavations in fall 2012. Did they sign these closure agreements just for show?

After numerous inquiries from MEJO, the DNR site manager for the Goodman site finally confirmed this month that Goodman Center leaders did not notify him prior to the start of their

September 2012 excavation projects (nor earlier excavation projects, presumably, since there were no documents for those either). The Goodman executive director talked to the DNR about the statutes they are required to follow—but not till two months *after* the projects were completed and MEJO asked several times to see the required documents (which neither Goodman nor the DNR were able to produce). By that point, the soil had been hauled away to a landfill without required contaminant testing. Clearly the DNR did not review any soil testing results nor issue approval letters before these projects were initiated, as the law requires.



Dumpster full of soil excavated from the Goodman site. Where did it go? Was it contaminated? Should it have gone to a hazardous landfill? We'll never know.

Will the Goodman Center be cited—or reprimanded in any way—for violating DNR laws it agreed to follow? No. The DNR site manager assured us that everything was fine because “Based on our discussion the work crews who did the excavation were familiar with the site conditions and knew of the contaminated soil and the restrictions associated with managing the soils.” Moreover, the site manager concluded, he does “not consider this a significant issue, particularly since the work crew knew they could potentially encounter contaminated material and the site had a cap that needed to be restored.”<sup>1</sup>

Maybe these workers “knew of the contaminated soil and the restrictions associated with managing the soils.” Maybe not. We’ll never know. However, if they did know of these statutory restrictions, why didn’t they follow them? And, isn’t it Goodman Center’s responsibility—not the workers’ responsibility—to make sure relevant DNR laws for the site are followed?



Workers excavating and sweeping up afterwards. Did they know they were digging up contaminated soil? We hope so....

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<sup>1</sup> If this project was intended to “restore the cap,” this is the first we’ve been told that, even though we asked numerous questions related to this for months prior to this statement. If it true that this project was intended in part to restore the contaminant cap, this poses further questions. If the cap was broken--how long was it broken, and did damage to the cap increase potential exposures to children and others near that area? Why didn’t the DNR or Goodman Center provide copies of the Maintenance Plan they are required to keep on-site and up-to-date “in order

We hope these workers did in fact know they might encounter contaminated material, especially since one of the areas excavated was where the highest levels of PCE were found on the site during pre-closure testing. Clouds of dust were visible as workers excavated and swept up the site. But without testing the soil first, as legally required, how could they know whether or not the soil they were digging and breathing was contaminated and at what levels?

Further, contaminated site requirements are about much more than protecting the workers excavating the soil for relatively brief periods of time. What about center employees, café customers and, most importantly, the children using the center—especially those children playing 50 feet or less away from the excavation? Apparently, neither DNR nor the Goodman Center is concerned that there was no testing of the soil before excavation and disposal, and that no information was provided to employees, customers or users. The DNR does not mind that the Center did not take required precautions to prevent contaminant exposures to children and others.



The outdoor café is open the day of the excavation!



Children playing just a few feet from excavations

It seems, sadly, that despite statutes intended to protect the environment and public health, in practice, responsible parties such as Goodman Center (and the large polluting industry next door, Madison-Kipp Corp.) can ignore these laws and DNR project managers have wide discretionary powers on whether or not to enforce violations.<sup>2</sup>

Some may argue that the infraction at Goodman Community Center, a relatively small contaminated site, is inconsequential. We strongly disagree. Wisconsin DNR laws for contaminated and remediated sites such as the Goodman Center are intended to prevent unintentional and potentially harmful exposures to toxins among people at these sites—especially the most vulnerable people. Preventing such exposures is especially important at Goodman Center, which serves many low income children, children of color, and the elderly, and is surrounded by schools, daycare providers, and a neighborhood with many children and seniors.

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to maintain the integrity of the paved surfaces, landscaped areas and/or the building?" (Contaminated Soil Cap Maintenance Plan, Goodman Community Center, October 2008).

<sup>2</sup> DNR officials were not able to point to any legal documents explicitly allowing the use of such discretion in this case—or any guidelines for discretion regarding excavation at remediated sites (e.g., amounts of soil excavated below which requirements do not need to be followed).



Because Goodman Center leaders ignored laws they agreed to follow when they built the center, we do not know whether the soil excavated from the center’s property was contaminated or to what degree.<sup>3</sup> We do not know if contaminated dust from the excavations settled on gardens and compost piles at the center.

We do not know whether Goodman Center employees, people in the Ironworks Café, or children playing a few feet away inhaled contaminated dust as workers excavated soil—or what they will be exposed to over the longer-term as this dust is disturbed and re-circulated into air and onto surfaces.

Last but not least, this unfortunate situation poses broader questions. If Goodman Center and Madison-Kipp Corporation can blatantly ignore DNR laws and get away with it, how many other industries in Madison and throughout Wisconsin are allowed to as well? How many laws is Kraft Oscar Mayer ignoring? Madison Gas and Electric? When global corporations dig new mines in northern Wisconsin, will they violate or ignore DNR laws? If they do, can we really trust the Wisconsin DNR to do anything about it?



Food pantry bread and produce out during adjacent to the excavation site—free for the taking

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<sup>3</sup> This would be invaluable information, since the level of contamination of the removed soil likely reflects that of the soil remaining on the site. Goodman’s closure documents state that some chlorinated contaminants (e.g., PCE) beneath the Goodman property are from Madison-Kipp Corp. Perhaps this is why the DNR does not measure soils and vapors at the center despite its close proximity to Kipp? Perhaps Madison-Kipp does not want DNR, Goodman Center, or anyone else to open that can of worms?